



Slingmakers

Issue No. 105

Spring 2005

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Letter From The President

Well here we go into the New Year hoping all is well and good health prevails. Your volunteer Board of Directors and their 18 committees have been busily at work. In January we held our winter Board meeting and plotted out our fiscal responsibilities and agendas for this upcoming year. Your organization is financially sound and with the quality of members on the Board and selected committees, we shall have a good and responsive year.



On March 18th we just completed the 5th annual AWRP Government Affairs Committee briefing in Washington, DC at the United States Chamber of Commerce. The AWRP was briefed on the Chamber's political program update, OSHA and the minimum wage, health care and AHP issues and an overview of small business issues. This meeting was most informative and I ask our members to please attend next years briefing.

Your Secretary and Communication Chairwoman, Ms. Anne Renfroe, has put together our request to poll the association members on its desires and future requests for the continued success of the AWRP. This survey will be reviewed and presented this spring, evaluated this summer and presented to the members by the fall meeting. By conducting this survey we shall be able to keep our Association on the continued path that our members desire.

The Insurance Committee, headed by Brad Fowler, has worked hard to make sure our members

retain their required Proof of Liability Insurance. This task has not come easy. With the vital help of both your Executive Director and staff, they have compiled a data base that will work in keeping the required current insurance certificates on file and updated.

Dan Merrill, Safety Committee Chairman, is putting together the final touches on the Test Bed and Safety Procedures report. This has been a formidable task, since no data has ever been written in detail on the proper safety methods of test beds. We hope to have this report submitted and presented to our members by the end of summer.

Data Gathering, headed by Mel Fireovid, has mailed out this years request for your participation in the Profit Planning Survey. We continue to slowly increase our participation. And with today's struggling economy this tool can be valuable to our regular membership.

Program Chairwoman, Teresa McGee, has worked hard in presenting a viable program to our members at the General Meeting. Her endeavor and enthusiasm in working on this shall be well received by our membership. After our April meeting, she will be moving on setting up and recruiting participants for our Fall PIE Exhibit in Boston. As always, this will sell out fast so don't hesitate when the registration is presented.

We are looking forward to a very exciting and interesting general session in Scottsdale, Arizona on April 17-20. I hope to see you there.

Respectfully,
Bob Cushman,
President, AWRP

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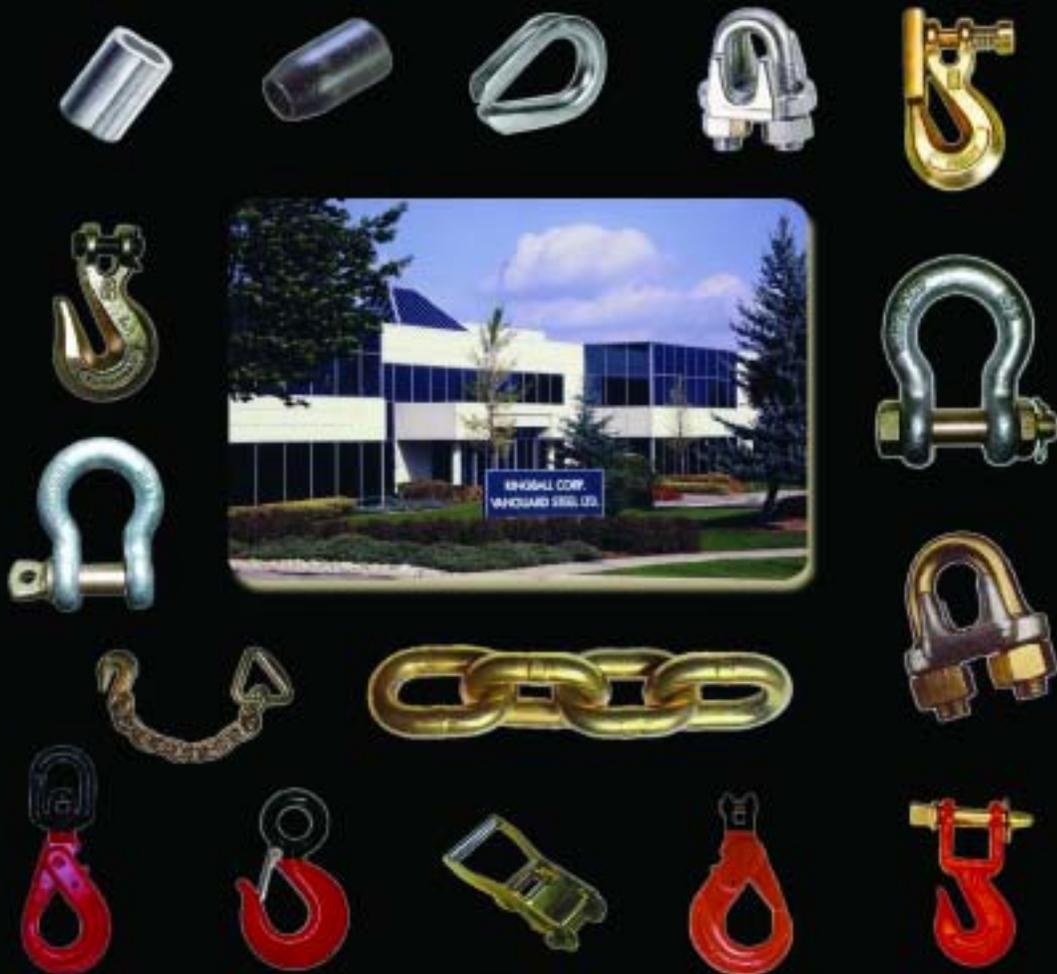
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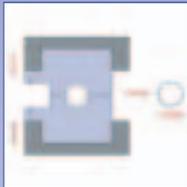
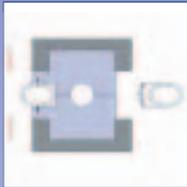


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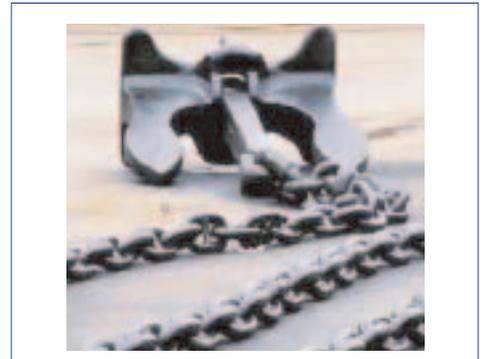
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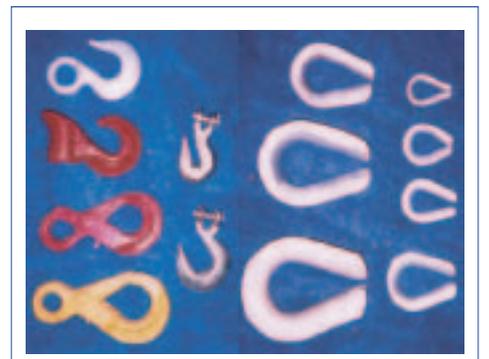
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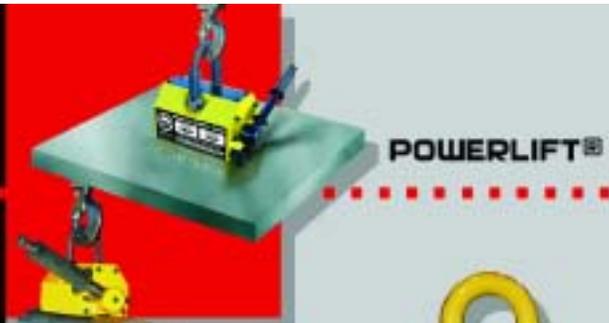
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GOVERNMENT AFFAIRS COMMITTEE BRIEFING in WASHINGTON, D.C.

By
J. Barry Epperson,
Legal Counsel and Chairman,
Government Affairs Committee



On March 18, 2005, the Government Affairs Committee of AWRF held its fifth annual government relations briefing at the U.S. Chamber of Commerce in Washington, D.C. Those attending were President Bob Cushman, Vice-President Mike Wallace, Chief Association Executive Jeff Gibert, Chairman Barry Epperson, Past-President Gary O'Rourke, Richard Griswold, President of Loos & Company, Jeff Susman, President of Sling Max, Gayle Protzko, Vice-President of Indusco Group and Scott St. Germain, Vice-President, I & I Sling.

After enjoying the camaraderie of a private AWRF dinner Thursday evening the group assembled on Friday morning in the ARCO Room at the historical U.S. Chamber offices on H Street immediately across Lafayette Park from the White House. Introductions to the exclusive briefing were made by Chamber Program Chairman Ed O'Brien, Director of Association Membership. The format involved an open forum under the direction of six Chamber speakers - each an expert in a specialized field of business-government relationship. The speakers were carefully selected based upon a dialogue between the AWRF GAC and Chamber meeting planners in order to tailor the presentations to the exigencies of the lifting, rigging and load securement industry. Following Ed O'Brien's introductory comments he explained the Chamber's increased emphasis on congressional contacts under the direction of President Tom Donahue.

The initial speaker, Christian Brophy, Manager of the Chamber Grassroots Program, spoke to the group about the importance of participation in the political process. From this presentation we learned that Chamber members from eighty-nine countries in addition to the U.S. who are interested in elections in this country can log on to Voteforbusiness.com under their member number (AWRF's is 902023) to receive up to date information on critical political races. The emphasis on elections is designed to satisfy the increasing awareness of employers that their employees want more information about alternative political candidates and issues.

The next speaker was Marc Freeman, Director of Labor Policy, who was a former staffer at the House Small Business Committee. With Marc, we explored AWRF's options and strategies regarding the obsolete and unsafe OSHA Sling Safety Standard as well as that agency's equivocal Swager Guarding positions. We were also briefed on the status of the perennial federal minimum wage issues. According to this speaker these issues are compounded by the fact that DOL has yet to name a permanent OSHA Secretary following the resignation of John Henshaw. The current acting secretary, John Snare, according to conventional wisdom, is slated for the lesser role of Deputy, leaving only guess work as to the new office philosophy.

The next speaker, Ron Eidshaug, Director of Congressional Affairs at the Chamber, brought us some good news on the subject of what to expect in the way of new government agency regulations. AWRF members are painfully aware that too often throughout the regulatory history of this country, rules are adopted by government agencies based upon "junk science", as well as failure to conduct sensible cost benefit analyses. Recently with the Congressional adoption of the Data Quality Act, agencies such as OSHA will be held to higher standards, requiring real scientific background data, and economic viability prior to the promulgation of regulations affecting the workplace.

During this segment of the program AWRF members brought to the table some stimulating discussions regarding counterfeiting of intellectual property and products as well as the equally disturbing issue of labor outsourcing. Although Chamber experts on these subjects were not available, we were assured that these issues are being studied at the ground level by the Chamber Foundation in an effort to identify which aspects are best solved by legislation as opposed to regulation or simply through the vagaries of the marketplace itself.

Discussions of these issues led to a dialogue on the prospects for a U.S. Energy Policy during the 109th Congress. Considering the general effect on the economy of the price of oil and natural gas, the concensus at the Chamber seemed positive that Congress would respond. Newly approved drilling in specific regions of Alaska where hydrocarbon reserves are plentiful seems indicative of a heightened awareness in Washington that a comprehensive energy policy is mandatory.

The next speaker was Katie Strong, also a Director of Congressional Affairs, whose expertise in the area of health care proved most enlightening. The current optimism at the Chamber

Continued on page 29

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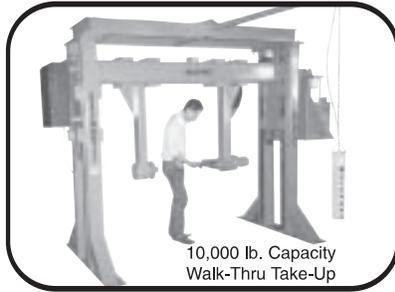
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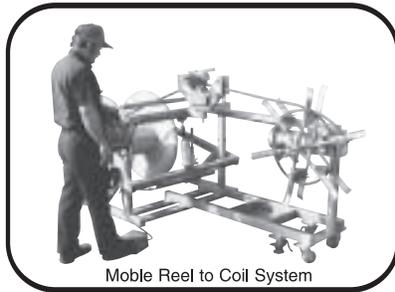
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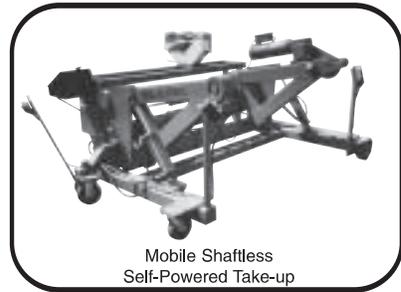
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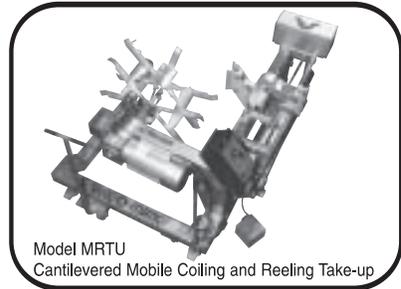
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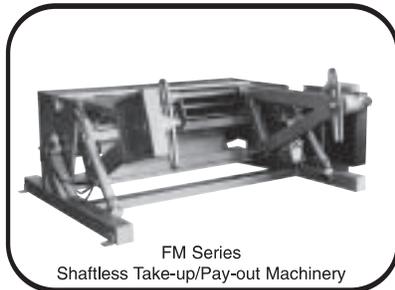
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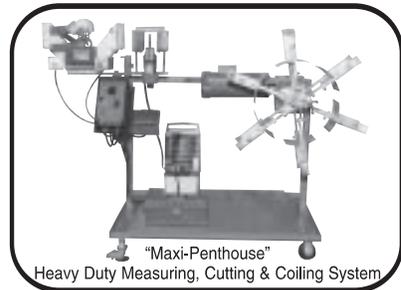
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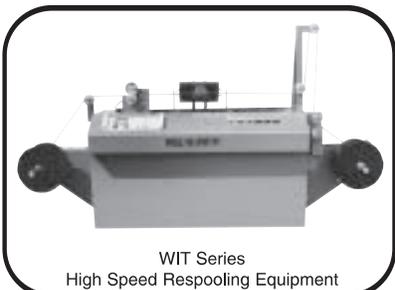
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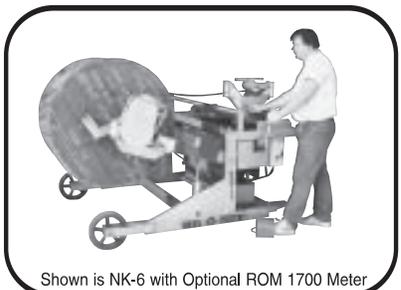
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Updated 2005 North American Standard Out-of-Service Criteria Now Available

The Commercial Vehicle Safety Alliance voting membership has approved several changes to the April 1, 2005 issue of the copyrighted North American Standard Out-of-Service Criteria. The changes will be effective throughout North America on April 1, 2005. Each change will be noted by an asterisk (*) and the April 1 issue is being reproduced on “pumpkin” or “orange” colored paper.

The 2005 release comes at a particularly significant time as the jurisdictions are taking an even closer look at vehicles and drivers because of security concerns. All CVSA-certified commercial vehicle law enforcement agencies in North America use the North American Standard Out-of-Service Criteria. It also is a “must have” resource for truck and bus safety managers, fleet directors, drivers and shop professionals.

The CVSA Executive Committee would like you to be familiar with CVSA Operational Policy #7. The handling, reproduction and distribution policy for the April 1, 2005 North American Standard Out-of-Service Criteria is as follows:

1. Copies will be furnished to members without charge. Members are permitted to reproduce and distribute the April 1, 2005 North American Standard Out-of-Service Criteria copies for internal use.
2. Associate Members will be provided copies for internal use and they will have permission to reproduce and distribute the April 1, 2005 North American Standard Out-of-Service Criteria within their own organization.
3. Member agencies may, upon request, provide one free copy of the North American Standard Out-of-Service Criteria to any individual or organization with the condition that the document is not to be further reproduced or distributed.
4. All requests to purchase the North American Standard Out-of-Service Criteria are to be referred to CVSA Headquarters. And, unless under special circumstances approved by the Executive Director, no member is authorized to offer the North American Standard Out-of-Service Criteria for sale or to recover costs of reproduction and handling.

North American Standard Out-of-Service Criteria (OOSC) (Effective April 1, 2005). 2005 OOSC (U.S. Edition). 2005 OOSC (CDN Edition). 2005 OOSC (French CDN Edition). 2005 OOSC (Spanish Edition U.S. Codes). 2005 Level VI OOSC for Transuranic Waste and Highway Route Controlled Quantities (HRCQ) of Radioactive Material

The handbook and out-of-service pictorial edition also includes descriptions of the CVSA North American Standard Levels of inspection, Inspection procedure schematics, Mexican CDL information, the CVSA Strategic Plan, and select CVSA operational policies including an explanation of the CVSA Decal Program. The 2005 edition also includes several additional color photos of out of service violations.

To order copies of the 2005 North American Standard Out-of-Service Criteria, visit www.cvsa.org or contact CVSA Headquarters cvsahq@cvsa.org. Orders of 50 or more copies qualify for a quantity discount.

If you have questions, comments or concerns, please contact CVSA Headquarters at 202-775-1623.

Make Training stick by overcoming 3 complaints

One of the biggest frustrations about safety training is getting the info to stick with workers once the session ends. And one of the best ways to do that is to remove the obstacles that get in the way of people learning. Studies show that employees most often have these same three complaints when it comes to their safety training:

1. Lack of time for training
2. Training isn't relevant and training is of poor quality because of materials or trainer.

You can overcome each of these three complaints by: Making sure people have enough time away from their regular duties and include time for questions and answers.

Citing facts and figures that show how important the training information is and preparing yourself to be at your best when doing the training.

Key step: Be sure you thoroughly understand the material yourself.

4 Steps to make safety training more effective

You spend so much time each day keeping things going that it's often tough to find time to make training sessions interesting. But by keeping a few simple things in mind, you can make your safety training more effective. Try these four steps:

1. Keep it moving. It's good not to get stuck on any one topic for too long. Some people get by using a timer. Ask an employee to set the timer for you at the start of each topic. That also lets everyone know time is important.
2. Use Handouts: Handouts that reinforce the information you tell workers are a great training aid. People read them later. And if you give people handouts that cover the next training topic, it gives them a jump on that, too.
3. Leave'em laughing. The power of humor can keep people interested. Industry publications, newspaper and the web offer safety-related cartoons that can help you drive home a point.
4. Make tests count. Test employees at the beginning and the end of each training session. That way people can compare there before and after scores and see how much they've really learned.

You're as good as your people in safety matters

The safety of your people directly reflects upon your own supervisory skills. Put another way: You're as good as your workers. So how do you make them better at safety? Usually this space is reserved for hands-on tips and ideas you can put into practice right away. But it never hurts to have some safety management techniques that work for you over the long haul, too. For instance, when observing safety conditions, always ask yourself these six questions:

- | | |
|-------------------------------------|---------------------------------------|
| 1. Are employees in the right area? | 4. Are they using correct equipment? |
| 2. Are they paying attention? | 5. Is the equipment working properly? |
| 3. Are they using PPE | 6. Are these other obvious hazards? |

Those six questions help to prevent accidents. Now here are six more to ask yourself after an accident or near miss:

- | | |
|--------------------------------------|--|
| 1. Was the worker careless? | 4. Did the worker take shortcuts? |
| 2. Did the worker obey safety rules? | 5. Is the worker accident-prone? |
| 3. Were conditions unsafe? | 6. Should the worker have been in that area? |

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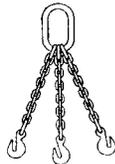
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THE EMPLOYER'S ADVISORY

AQUARTERLY NEWSLETTER HIGHLIGHTING CURRENT EMPLOYMENT LAW ISSUES

PREPARED BY BETTY BECHTEL, MICHAEL SANTO, AND SAM STARRITT
4th Quarter DUFFORD, WALDECK, MILBURN & KROHN, L.L.P. 2004

WHERE THERE'S A WILL...

Grace has been with XYZ Company for a short time. Within the last year, Will, a longterm employee, with a spotless performance record, became her supervisor. Immediately, Will began making comments about Grace's "lifestyle"; Grace is a lesbian. He told Grace that "God's design for a relationship was between a man and a woman" and that "...homosexuality is wrong and considered by God to be a sin." Shortly thereafter, the two began praying together and Will bought Grace a ticket for his church's Women of Faith Conference, which Grace attended.

Within the next few months, Grace received a promotion. When Will's supervisor, Jack, heard that Grace took the promotion, Jack asked Grace why. Grace explained that she was leaving because she was uncomfortable with the way Will treated her sexuality. Grace told Jack of a recent conversation in which Will had mentioned to Grace, at the end of a performance review, that he would be disappointed if Grace were dating another woman, but happy if she were dating a man.

When Jack questioned Will about this, Will admitted having the conversation with Grace and that after he made the comment, Grace looked uncomfortable. And he also admitted that he had informed Grace on at least three separate occasions that homosexuality was a sin. XYZ terminated Will because it found his conduct to be a gross violation of its harassment/discrimination policy. Will sued XYZ claiming that it discriminated against him on the basis of his religion.

Will claimed that he had a spotless employment record, that his conduct could not be considered harassment, and that XYZ's reason for termination was a smokescreen for its true reason – his religion.

The Court found each of Will's arguments unpersuasive. First, the Court found that Will's reliance on his spot-free record was insufficient to raise an inference that XYZ was more likely motivated by his religion than by the behavior. Second, the Court determined that Will admitted awareness that his actions may have violated the Company's policy when he explained:

"Sometimes there is a higher calling than a company policy."

Finally, the Court found Will's claim that the true reason for his termination was his religion was unpersuasive, because Will didn't offer any evidence of animus by XYZ towards his religious beliefs. XYZ had a clear policy against harassment based on sexual orientation; Will was aware of the policy; and Will's statements to Grace violated XYZ's policy. *Bodett v. Coxcom, Inc.*, 2004 WL 877643.

Practical Tip: This case reinforces employers' right to terminate supervisors who the company honestly believes violated its policies. But the real lesson to be learned from this case is for supervisors. Supervisors who espouse their religious, life style, or moral beliefs to subordinates may be left unprotected if the employer determines that the supervisor's conduct was inappropriate or violated a company policy. In dealing with subordinates, supervisors should keep their opinions on sensitive, nonwork- related issues to themselves.

EMPLOYER'S REVENGE

Angela was not the angel her name implied. As secretary for A-1 Auto Repair, her duties included collecting payments from customers, paying bills, making deposits, and preparing and issuing payroll checks. Unbeknownst to A-1, Angela added another duty – stealing A-1 blind!!!

After Angela's employment terminated, A-1 discovered her theft and reported her to the local authorities, who prosecuted and convicted her. The court ordered Angela to repay A-1, as restitution, about half of what she had stolen. She appealed, but the conviction was affirmed.

Undoubtedly, A-1 was pleased that Angela was convicted and required to repay some of her illegal gains. But A-1 wanted more – three times more than she had stolen from A-1.

Because the criminal system could not grant A-1 its wish, the company sued Angela in civil court. It relied upon the civil theft statute in Colorado (§ 18-4-405), which provides that "All property obtained by theft, robbery, or burglary shall be restored to the owner . . . The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. In any such action, the owner may recover two hundred dollars or *three times the amount of the actual damages* sustained by him, whichever is greater, and may also recover costs of the action and reasonable attorney fees. . ."

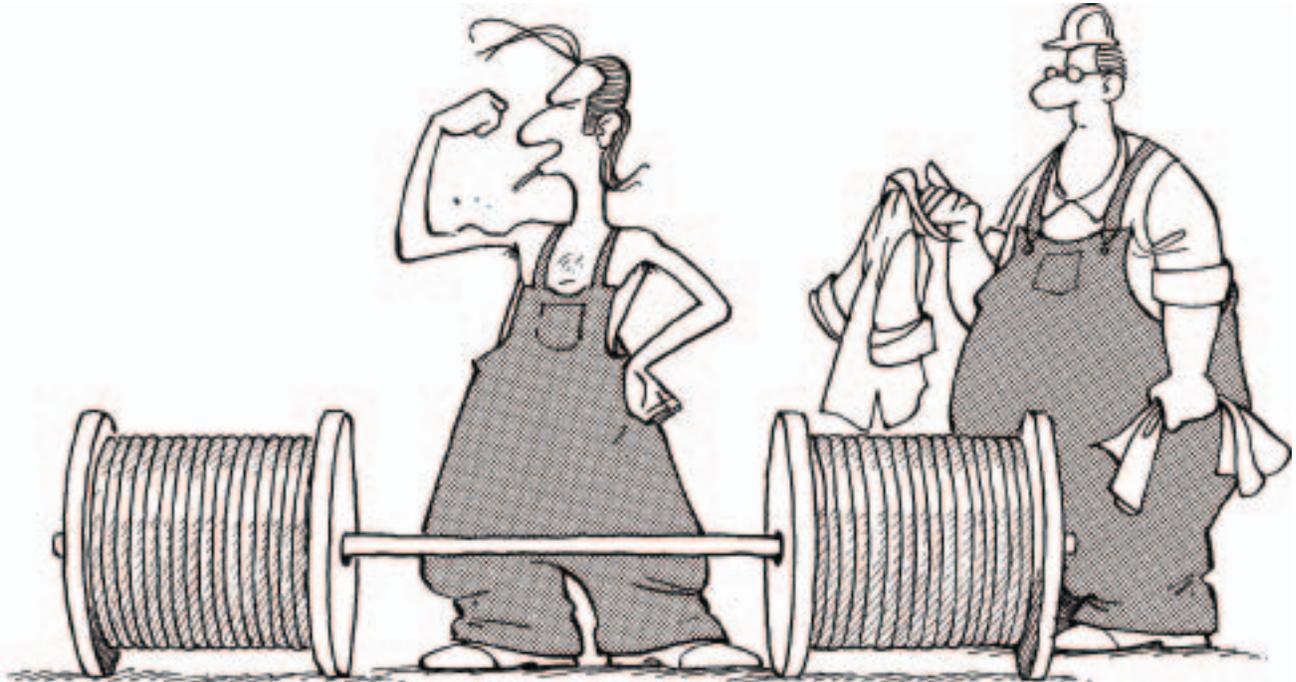
A-1 asked the civil court to immediately enter judgment against Angela without requiring a trial. After all, the district attorney had already proven that Angela stole A-1's money at her criminal trial. The court agreed with A-1 because the criminal trial gave Angela a full and fair opportunity to present her defense to the theft. So it granted A-1's motion and entered judgment against Angela for treble damages, costs, and attorneys fees. *A-1 v. Bilunas*, 93 P.3d 598.

Lesson: Many employers are reluctant to file a criminal complaint against an employee who has taken money or property. Those that do file are often disappointed because the authorities decide not to pursue the matter or do not require the convicted employee to pay full restitution. But the A-1 case proves that when the moon and stars align, the criminal system is very useful in redressing employee theft. The criminal trial is paid for by the

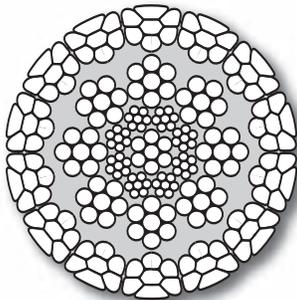
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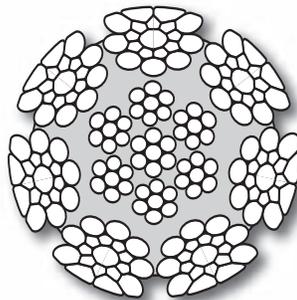
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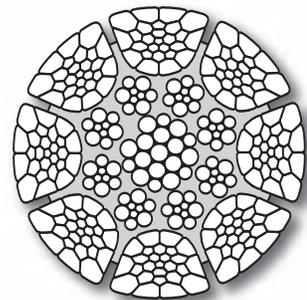
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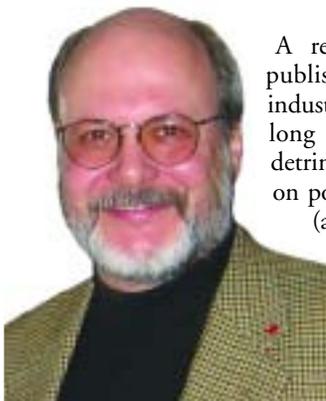
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UV Degradation of Web Slings

Study by WSTDA confirms what industry experts and many users suspected for the last 25 years

By Knut Buschmann



A research study by WSTDA first published in 2003 confirmed what industry experts already suspected for a long time: UV exposure has a very detrimental effect on web slings. Less so on polyester and more so on polyamide (also known as nylon) slings.

All this does not come as a big surprise. Back in 1981 the WSTDA published a study on the effects of UV degradation which much the same conclusions.

However, it took almost another 10 years before that 1981 study filtered through to all sling makers; some of which, at that time, used to advertise in their catalogues that “Both nylon and polyester webbing remains virtually unaffected by Ultra violet rays and exposure to the environment”.

In the late ‘80s Mike Parnell (WRRRC) took a random sample of 40 web slings all said to be older than four years and pulled them to destruction. Granted that this test did not focus on UV degradation only the results were not that much different compared to the latest study. He also found web slings with a strength loss of more than 40%. However, Parnell’s study was missing the background of being ‘scientific’ and as such was much criticized by WSTDA after he published it in his newsletter “The Professional Rigger” back in July of 1989.

That was pretty much the end of actual tests for more than a decade. A small number of individual sling fabricators continued their own tests with results in the 40-60% loss bracket. Because some sling fabricators began to campaign like “my nylon is better than yours” the issue was treated more on an individual basis since a widely accepted new scientific study was just not available at that time.

Interestingly, and to no ones surprise, the issue of UV-degradation is not limited to web slings. Fiber rope manufacturers continued to debate the issue (and web sling manufacturers continued to ignore that debate) as well as other industries researched UV degradation; notably the tent, awning, and sail manufacturers, but also manufacturers of ‘Geosynthetics’. These are synthetics made for landscape applications which also have to resist long term UV exposure. The chemical companies continued the discussion of UV stabilizers (e.g. titanium dioxide). Within the last couple of years, UV resistant clothing fabrics were developed (e.g. BASF Ultramid) with labels like “Anti-UV Fabric” or “Australian Standard”. In short, nearly all other textile industries researched the topic of UV degradation.

Ultraviolet (UV) light is the light at shorter wave lengths than the visible light, past the violet end of the spectrum (‘ultra’ or beyond violet). UV light degrades synthetics by transferring energy into the

fibers. This energy can cause damage by creating heat, or its energy can actually break molecular bonds in a fiber’s structure. The main source of UV light is the sun, but some UV light is also created by welding arcs and, amongst others, by Xenon light which is now used in automobiles as a brighter headlamp.

Opaque synthetics are materials that allow light to not pass through. In an opaque textile the light has to break down the outer layer before it can pass down to the inner section. If the textile is completely black (or opaque) then the light only acts on the surface. Secondly: Thicker materials resist UV light better than thinner. Thicker materials allow the surface to suffer some UV degradation while retaining the strength in the inner core material.

And lastly: UV (B) light which attacks synthetics creates reactive byproducts that can cause a chain reaction of molecule damage that can accelerate the breakdown of the fibers. UV stabilizers are added to the fibers to prevent, or at least slow down, additional damage.

All this is important to understand when reading the latest

WSTDA Study. This study, as scientific as it is, was made with one, and only one (1), degrading factor in mind: UV light degradation. No other possible degrading factors were being considered at the SAME time. For example chemical exposure by washing agents (e.g. boat hull cleaners), repeated loading and consequent stretching of the fibers, steam washing of the slings etc. Slings which are exposed to more than one degrading factor may very well show different and possible worse results.

Also, it is important to note that the webbing material was ‘sling webbing’ and not ‘tie-down’ webbing which is thinner than the

sling webbing. The webbing thickness can contribute to the long term effects of UV degradation.

- The conclusions of the WSTDA Study are
- : Polyester slings lost up to 30% of their strength during the first 12 months of exposure, after which the strength loss leveled off
 - : Nylon slings showed a strength loss of up to 50%-60% after 36 months of exposure time with no indication of levelling off.

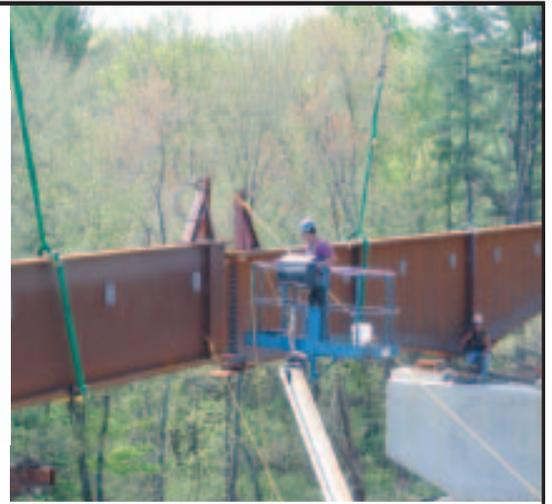
The important question now to raise is: Should web slings be given a maximum life time expectancy, requirement for proof testing, or other limitations of use in the future ?

Or would we just see a repeat of the 1980’s where the study was ‘punched with 3 holes and filed away’ ?

WSTDA and AWRF have a task ahead of them. Wish them luck. Anyone can purchase the Study for US\$ 75.00. Contact WSTDA via their web site “www.wstda.com”. The publication is listed under “SUMMARY REPORT OF THE ULTRA VIOLET (UV) DEGRADATION TESTING PROGRAM FOR SYNTHETIC WEB SLINGS”, in short as ‘WSTDA-UV-Sling-2003’



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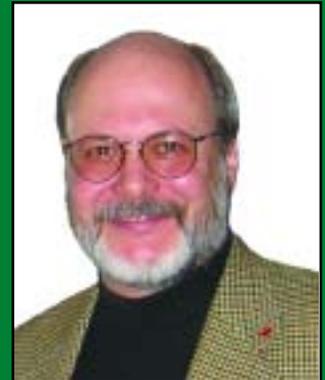
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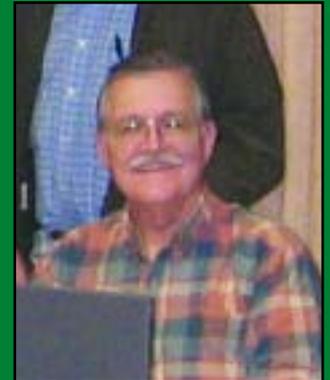
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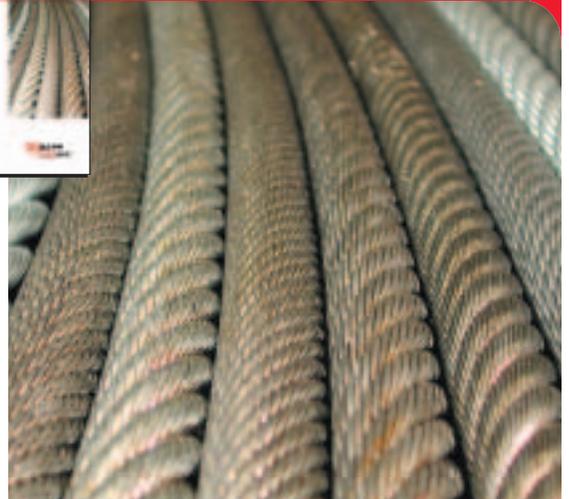
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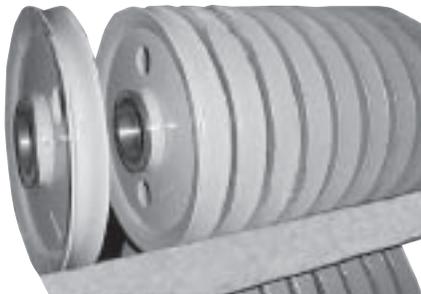
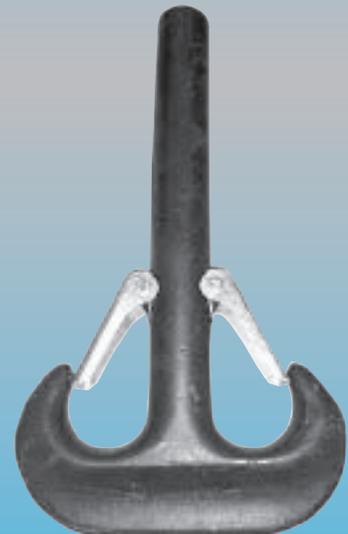


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taxpayers, saving the employer attorneys fees and costs. And because the criminal burden of proof is higher than the civil standard, if the criminal trial results in a conviction, the employer can use that conviction in a civil suit to get judgment against the employee for triple the amount stolen, plus costs, and attorneys fees.

Getting treble damages is such lovely revenge, why doesn't every employer file a civil theft suit after a criminal conviction? Well, you've heard the old saying, "you can't get blood out of a turnip"? Collecting the judgment from Angela, who may now be a jailbird, could be a very difficult task. Plus, it costs money to file a civil claim and win a judgment, even without a trial. Thus, the decision on whether to pursue this remedy must consider all these factors.

MONDAY MORNING QUARTERBACK

For many employers, the thought of contesting an employee's claim for unemployment benefits ranks right up there with having a root canal or watching the Broncos lose to the Raiders. An example of the basis for this feeling is Regional Transportation District's recent unemployment loss to its former employee, Renita Bell. *Bell v. ICAO*, 03 CA 1161. By playing Monday Morning Quarterback, we can see where RTD went astray. Hindsight is, after all, flawless.

Background. RTD had grown weary of Bell's repeated performance problems. So, after she served a five-day suspension for her poor job performance, RTD demanded that she sign a Job Performance Agreement. Bad call #1.

The Agreement required Bell to admit that her job performance was unacceptable and required her to waive significant legal protections in the Company's Employee Handbook. When Bell refused to sign the Agreement, RTD fired her for insubordination. Bad call #2.

Then at the unemployment hearing, RTD claimed that it terminated Bell for insubordination because she refused to sign the Agreement. It didn't thoroughly address Bell's performance problems that led to the suspension or the offer of the Agreement. Bad call #3.

Each of these "bad calls" helped Bell gain significant yardage at unemployment.

First, as a general matter, employers wishing to retain their employment at-will rights (i.e., all employers) should avoid signing "performance agreements" with their employees. These agreements are often used by employees to claim that the relationship is no longer at-will and that the employer can not terminate the employee unless it proves a breach of the agreement. Exceptions to this include when the law requires a signed agreement (e.g., wage deductions) or when an employee tests positive for drugs, and the employer wants expanded testing rights before reinstating the employee.

Second, RTD would have been better served by simply giving Bell a written reprimand after the suspension, if it didn't feel her performance warranted termination. The written warning would have explained the performance issues, the areas that RTD expected Bell to improve on, and advised Bell that any further problems would lead to discipline, up to and including termination. If Bell refused to acknowledge in writing that she

received the warning, it could have brought in another supervisor to sign and date the written reprimand stating that Bell had refused to sign it.

If, on the other hand, RTD determined that Bell's conduct did warrant termination, it should have terminated her for poor performance. And it should have limited its evidence at the unemployment hearing to Bell's performance problems, as listed in the termination letter, and why these problems warranted her termination.

In the end, citing insubordination for refusal to sign a last chance agreement appears to have diverted the referee's attention from Bell's performance problems, which caused RTD's touchdown pass to fall incomplete.

Lesson: If you have a solid reason for firing the employee, but want to give a last chance if the employee will agree to certain concessions over and above performing his job, be sure to give the employee a notice of termination based on the performance issues, and not based on a refusal to sign the agreement. The odds on you winning an unemployment dispute will increase considerably!

When a last chance agreement is appropriate, be sure to include a statement in **BOLD TYPE** that "this agreement does not change the fact that employment is at-will, and either party may terminate the relationship at any time, with or without cause or notice.

TAKING THE "INQUIRY" OUT OF SICK LEAVE POLICIES

Does your sick leave policy require all employees who are absent more than a certain number of days to provide a doctor's statement certifying the nature of the illness? If so, be aware that a court in the far away land of New York has determined that this policy violates the Americans with Disabilities Act. No Colorado court has ruled on this issue, and the New York decision is not binding on courts in our fair state. Nevertheless, the decision gives cause for concern. Accordingly, to be safe, employers may want to review and reword their sick leave policies to avoid the ADA pitfalls New York cited.

In that case, the Union sued the New York Transit Authority over its sick leave policy requiring employees who were absent due to illness to notify the Authority and give "a brief statement of the nature of the illness or condition causing the absence" at least an hour before they were to report to work. Upon return to work, all employees must submit a sick form stating the "nature of the disability." A doctor's certification had to be completed when the employee was absent more than three days, or if the employee was a frequent user of sick leave, after an absence of more than two days. The Authority also required employees who had taken six absences without a doctor's certification in one year, or after a suspicious "pattern of usage," to provide a doctor's certification for any absence. The doctor's certification required the doctor to state the diagnosis, treatment, prognosis, and expected date of return.

The relevant section of the ADA provides that, "A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity."

The Authority defended its policy on the basis of business necessity, pointing to a history of abuse of sick leave. It also claimed

Continued on page 24

safety concerns for certain safety-sensitive positions, such as bus drivers. The court held that these reasons justified the inquiry with respect to the sick leave abusers and employees in safety-sensitive positions, but not employees in general.

With respect to the other employees, the court said that the Authority may “require an employee to call in advance of an absence, but may not require the employee to describe the nature of his illness. The Authority may require an employee to submit a sick form on his return, in which the employee must state that he was unfit to work due to illness during the period of absence, but may not ask the employee to state the nature of his disability. The Authority may also require an employee to submit a doctor’s certificate for absences of certain lengths. The Authority may require that the doctor certify that the employee was incapable, due to illness, of performing his duties during a specific period, and that the employee is now fit to resume his duties, but may not require the doctor to describe the nature of the illness or treatment.”

Bottom line: According to New York, a policy requiring all absent employees to state the nature of their illness violates the ADA. The court did not rule against an employer’s right to make this inquiry when the individual has abused sick leave, is in a safety-sensitive position, or when necessary to determine if an employee is eligible for leave under the Family and Medical Leave Act, or needs an accommodation under the ADA. 2004 WL 2284391.

FOUR POINTS ON CHRISTMAS BONUSES

1. There is no law requiring an employer to give Christmas bonuses. The “Golden Rule” is not “law.” However, if earlier in the year you unconditionally promised employees that 10% of profits would be divided among them as a Christmas bonus in proportion to the hours they worked that year, the Christmas bonus is not discretionary and the company will be liable to employees if it doesn’t pay up as promised.
2. Any non-discretionary bonus paid at Christmas increases the regular rate of pay for the applicable period covered by the bonus. This increases the overtime rate. The company must pay this increase for any overtime worked during the period covered by the non-discretionary Christmas bonus.
3. Monetary Christmas bonuses are subject to tax withholdings and payment of employer taxes, the same as other wages, regardless whether the bonus is discretionary or nondiscretionary.
4. Giving no bonuses at Christmas will cause big chunks of coal to appear in your stocking on Christmas morning.

FLASH: The Employer’s Advisory is now available on line at www.dwmk.com. The past three years of quarterly editions are stored for your convenience.

Q & A

- Q. John, our receptionist, claims that he is being discriminated against on the basis of his sex by the other office employees who are all women. It was a mistake hiring him to work in the office. The women won’t accept him. Can we transfer him to a field job? We figure he’ll quit rather than work outside.
- A. *You can, but John may have a claim for sex discrimination. Transferring John from a cozy office job to an outdoor, manual labor position in winter, may be considered an “adverse employment action,” the same as if you fired him. Instead, you need to deal with the situation directly by refusing to tolerate any unfair treatment of John based on his sex. If, on the other hand, John’s problem with the ladies is not related to his sex, but to his own unacceptable conduct, then he should be warned and disciplined accordingly. It is not wise to solve sex discrimination complaints without investigation, or take action against the alleged victim that is calculated to make him quit. Tart v. Illinois Power, 2004 WL 877580.*
- Q. We have truck drivers who perform all of our deliveries. They lease their trucks from us and are independent contractors. Do we have to carry workers’ comp insurance for them?
- A. *Colorado workers’ compensation law allows common carriers to enter into truck lease agreements with drivers who meet the law’s requirements for independent contractor status and to require that they pay for their own workers’ compensation insurance or equivalent insurance coverage. But the lease must require that the driver be insured for work-related injuries. If the insurance is not workers’ compensation through Pinnacol, it must be disability insurance for on and off the job injury, health insurance, and life insurance that is, at least, comparable to the benefits offered under workers’ compensation. If the driver is injured and does not have such insurance coverage, the driver will be treated as your employee and you will be responsible for providing workers’ compensation benefits. USF v. ICAO, 2004 WL 2609640.*
- Q. One of our employees is adopting a child from China and has requested FMLA leave to go get the child and spend time with her after returning. Is this FMLA?
- A. *Assuming the employee is otherwise qualified for FMLA (employed 12 months; worked 1250 hours or more in the past 12 months), yes, for up to the 12-week limit.*
- Q. *My assistant was given a written warning last month for being rude to customers. She has asked me to remove the warning from her personnel file instead of getting her a Christmas gift. Should I do it? It will save me the hassle of shopping. I really hate shopping.*
- A. Never agree to remove a warning from a personnel file, unless the warning is incorrect, contains illegal statements, or was given for an illegal purpose. You may want to rely on the warning if the misconduct is repeated and you elect to terminate the employment. It could make the difference between winning and losing an unemployment benefits dispute, or a law suit filed by the employee.

STRICTLY SALES

Confident Closing Non Verbal Communication for Closing the Sale

People buy on emotion or intuition and justify it with logic. We buy from people or companies that are confident and make us feel comfortable. More importantly, we take our cues on how honest, trustworthy, and confident someone is based mostly on their non-verbal communication – their body language or tone of voice. We read and react to their silent cues without knowing it.

The key to making someone comfortable when closing the sale is to project confidence. If we want them to relax we have to relax. It can be tough to relax because of our concerns, thoughts and emotions when we have a lot riding on a deal. We can project confidence and act relaxed if we prepare in advance and know what to do.

So what should we do? Consider how you know when someone is tense or uncertain. They act like a deer in the headlights. When animals (including humans) are threatened they immediately freeze and hold their breath. This is a survival instinct that signals to others that there is danger present.

When we hold our breath our movements are jerky and irregular and our ability to reason goes out the window. Yet this is exactly what we do when we let our tension or internal dialogue override our confidence during a sales call. It's worse when closing/asking for the order because we have something to gain and have our time, effort and ego invested.

The key is to use simple language to ask for the order and then remember to breathe after we say it. That's right, breathe. The simple act of continuous breathing signals to others that we are "okay". Consider saying, "All that's left is to place the order" and then breathe out and keep breathing while you wait for them to answer.

Don't believe it could be that simple? Try this: Tell a friend that you are trying two ways of closing the sale and you want them to help you decide which is better. Tell them that you'll ask, "Any questions?" and they should answer, "No". Then you'll use a closing line and they should pay attention to how confident they feel after you say it.

First, take a step back. Now step forward and ask, "Any questions?" When they say "No", you say "All that's left is to place the order, okay?" and hold your breath. Keeping looking at them and quietly hold your breath as long as you can. Don't make it obvious what you're doing. Pay attention to how they look and act.

Second, take a step back. Now step forward and ask, "Any questions?" When they say "No", you say "All that's left is to place the order, okay?" and breathe out and keep breathing comfortably while you look at them and wait for a reply.

Now ask them which close they preferred. Don't be surprised at the answer.

When we hold our breath and hang on a prospects' answer we look like the deer in the headlights. They react on instinct, freeze up, and hold their breath when we do. They don't know what's wrong, but suddenly they don't feel good. Needing to say something they stall

or make up an objection to get out of deciding while we're in the room. We eliminate any chance to address objections, concerns or comparison with other offers.

This is the direct result of holding our breath. We have a lot riding on the deal and want to "say it just right" so they will buy. This doesn't make sense. Think about what it's like when you're buying something. You don't care how they "say it", you want to know "are they telling the truth, is their offer right for us, and is it a fair price."

All of us have had a really terrible sales person charm us by "being themselves", even blundering through a sales pitch only to say, "Want some" at the end. We buy in spite of their technique because we trust that they're for real.

So if you want to close like an old pro. Make it simple. Choose a simple closing line and practice it so that it comes off your tongue easily. Then when the time comes, just say it and sigh. You'll close more often and everyone will feel better.

Editor note: This piece was condensed from an article of the same title that is available as www.donakers.com/artilces

BIO – Don Akers

Don Akers is a former *Golden Gloves champion* and *Olympic Boxing contender* who became an award winning sales pro. His 70 boxing matches taught him the importance of body language and "unconscious communication".

All this prepared him for a much bigger ring. With a B.S. in engineering, he spent the next 15 working for Fortune 100 companies in sales, engineering and management.

Along the way he discovered that important changes in how you communicate come "not from what you know but how you know it." At that point Don knew he had an idea for a unique training program. A program that would become a powerful tool for management, everything from sales and leadership, to team building and performance coaching.

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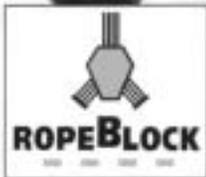
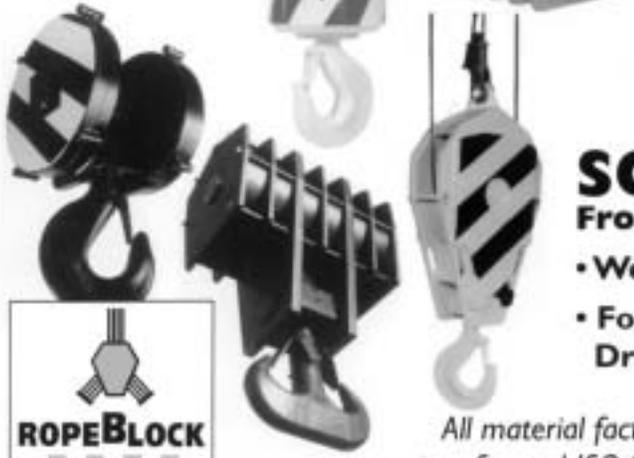
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To remain strong, professional organizations must provide for the needs of their members. In order to know what these needs are, there must be regular communication going both ways.

Several years ago, the AWRF membership was surveyed to determine the needs the organization identified as important. The response was good and based on the results some changes were made – most obvious was the addition of entertainment in our banquet schedule.

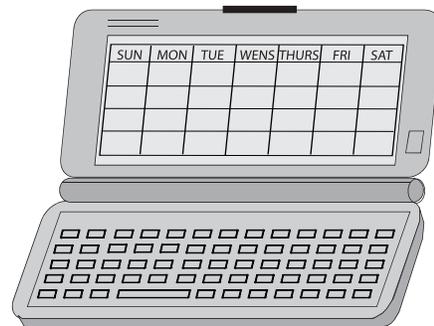
It is time to ask our members again to spend a little time to help the board in its effort to provide an even more responsive organization, assisting all categories of members in their goal to run their own business and guide our industry to a more successful position.

At the meeting in Scottsdale, you will hear more about the new survey. We hope you will plan to participate.

Anne Renfro
 Secretary
 Chair Communications Committee

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A.W.R.F. CALENDAR



2005

- April 17-20** AWRF General Meeting
 Double Tree Paradise Valley Resort
 Scottsdale, Arizona
- May 16-17** B30
 St. Petersburg, Florida
- June 7** TC 96 Cranes, Baltimore, Maryland
- June 8, 9** Wire Rope Technical Board
 Kenwood Club – Maryland
- September 25-23** AWRF Fall General Meeting
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 The Boston Park Plaza Hotel
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- April 23-26** AWRF General Meeting
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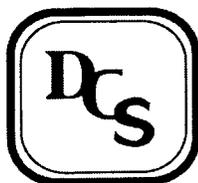
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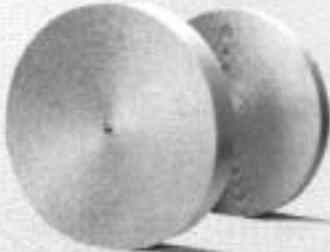
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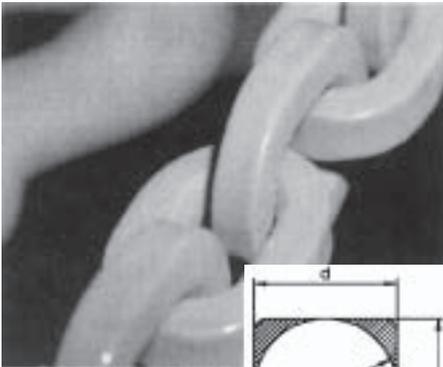
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GOVERNMENT AFFAIRS COMMITTEE BRIEFING in WASHINGTON, D.C.

Continued from page 11

regarding health care reform is based partly upon the early business related track record of the 109th Congress in passing the Class Action Reform Act, (an effort in which AWRF participated aggressively) as well as certain reforms to the National Bankruptcy Act. Needed health care reforms, which could occur as early as this year, would probably include Association Health Care Plans as well as possible damage limitations in medical liability cases. The GAC at AWRF has been engaged with other associations and coalitions throughout the past two Congressional sessions



in seeking to foster an environment for small business within which credible trade groups such as AWRF could leverage their membership numbers to broker lower health care premiums for their member companies. The House of Representatives has demonstrated little opposition to such legislation and momentum is increasing in the Senate. The GAC of AWRF will shortly be participating in an American Association of Association Executives (ASAE) "Fly-In" during which members from every state will simultaneously deliver the message to Capitol Hill that Association Health Plans can be instrumental in reversing the trend in escalating health care costs providing coverage for many workers who are currently without insurance.

Finally, we heard from our old friend, Giovanni Coratolo. In his role as Executive Director of the Chamber Small Business Council, Giovanni has been a consistent and tenacious champion of AWRF's quest for modernization of the outmoded Sling Safety Standard. As he pointed out to the general membership during our convention in Savannah, small businesses constitute the heart and soul of commerce and industry in every free country. With Giovanni's assistance during the past several years, the GAC of AWRF has developed new opportunities to pursue a modern OSHA Sling Standard. On March 9, 2005, "The Office of Management and Budget (OMB) announced ... that Federal agencies will be taking practical steps to reduce the cost burden on manufacturing firms operating in the United States by acting on 76 public nominations to reform Federal regulations." As a result of the persistence of AWRF and the U. S. Chamber, the Sling Standard is on this short list for revision by OSHA. According to an OMB summary of Agency responses to public reform nominations "OSHA has undertaken a major project review and update... of its standards..." and will submit to "Guidance on the Sling Standard [in] February, 2006...[while] Rulemaking on the Sling Standard will be considered during this project at a later date."

In an unrelated announcement of more good news, the IRS has issued comprehensive rules and definitions to implement the new business tax deductions contained in the Jobs Creation Act which became U.S. law in October, 2004. The proposed regulations set forth various alternatives by which qualified manufacturers and fabricators can take advantage of new cost deductions for domestic production activities. These deductions will escalate from three percent in 2005 to nine percent in 2010.

The Government Affairs Committee of AWRF expresses its appreciation to the U.S. Chamber and to the members of the lifting, rigging and load securement industry who helped make our fifth annual AWRF Government Relations Briefing another successful event.

NEW WORLD RECORD

Versabar purchases largest shackles ever produced

In June 2004 Versabar took delivery of the four largest rated shackles ever manufactured.

The 1550 Metric Ton WLL upset forged Wide Body Alloy shackles, produced by Forges LeBeon, were sold to Yarbrough Cable Service in Memphis by Kulkoni, Inc. of Houston, TX. Versabar, parent company of Yarbrough, designs, manufactures, and installs special spreader beam systems used in a variety of heavy lift applications. These shackles will further enhance the unique lifting capabilities Versabar offers customers worldwide.



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The jaws of the lifting clamp are made of a synthetic material with a very high coefficient of friction so that damageable plates can be held firmly and transferred in either a vertical or horizontal position. This also applies for materials with a very smooth surface, composites, coated plates or plates with a very hard (impenetrable) surface.

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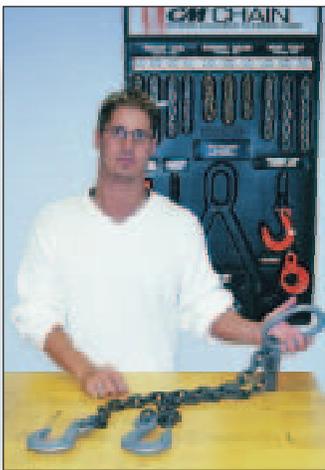
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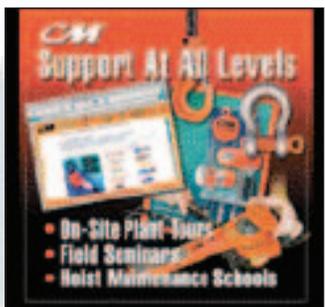


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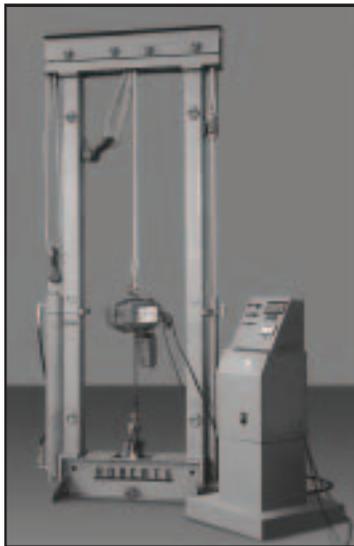


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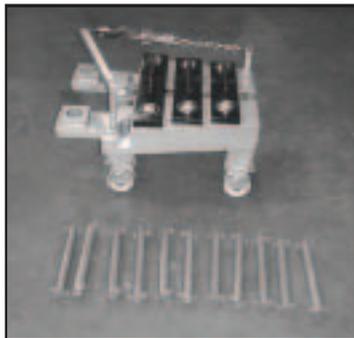
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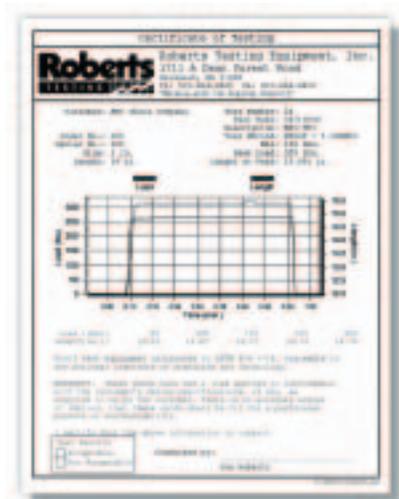
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